

A bill to be entitled
 An act relating to sexual battery on mentally
 incapacitated persons; amending s. 794.011, F.S.;
 providing definitions; revising terminology;
 prohibiting sexual battery upon a person who is
 voluntarily or involuntarily mentally incapacitated;
 providing criminal penalties; amending ss. 92.565 and
 787.06, F.S.; conforming provisions to changes made by
 the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (1) is added to subsection (1) of
 section 794.011, Florida Statutes, paragraphs (c) and (d) of
 that subsection are redesignated as paragraphs (d) and (c),
 respectively, and present paragraph (d) of that subsection and
 paragraph (e) of subsection (4) are amended, to read:

794.011 Sexual battery.—

(1) As used in this chapter:

~~(c)-(d)~~ "Involuntarily mentally incapacitated" means
 temporarily incapable of appraising or controlling a person's
 own conduct due to the influence of a narcotic, anesthetic, or
 intoxicating substance administered without his or her consent
 or due to any other act committed upon that person without his
 or her consent.

26 (1) "Voluntarily mentally incapacitated" means temporarily
 27 incapable of appraising or controlling a person's own conduct
 28 due to the influence of a narcotic, anesthetic, or intoxicating
 29 substance administered with his or her consent or due to any
 30 other act committed upon that person with his or her consent.

31 (4)

32 (e) The following circumstances apply to paragraphs (a) -
 33 (d):

34 1. The victim is physically helpless to resist.

35 2. The offender coerces the victim to submit by
 36 threatening to use force or violence likely to cause serious
 37 personal injury on the victim, and the victim reasonably
 38 believes that the offender has the present ability to execute
 39 the threat.

40 3. The offender coerces the victim to submit by
 41 threatening to retaliate against the victim, or any other
 42 person, and the victim reasonably believes that the offender has
 43 the ability to execute the threat in the future.

44 4. The offender, without the prior knowledge or consent of
 45 the victim, administers or has knowledge of someone else
 46 administering to the victim any narcotic, anesthetic, or other
 47 intoxicating substance that voluntarily or involuntarily
 48 mentally incapacitates or physically incapacitates the victim.

49 5. The victim is mentally defective, and the offender has
 50 reason to believe this or has actual knowledge of this fact.

51 6. The victim is physically incapacitated.

52 7. The offender is a law enforcement officer, correctional
53 officer, or correctional probation officer as defined in s.
54 943.10(1), (2), (3), (6), (7), (8), or (9), who is certified
55 under s. 943.1395 or is an elected official exempt from such
56 certification by virtue of s. 943.253, or any other person in a
57 position of control or authority in a probation, community
58 control, controlled release, detention, custodial, or similar
59 setting, and such officer, official, or person is acting in such
60 a manner as to lead the victim to reasonably believe that the
61 offender is in a position of control or authority as an agent or
62 employee of government.

63 Section 2. Paragraph (a) of subsection (2) of section
64 92.565, Florida Statutes, is amended to read:

65 92.565 Admissibility of confession in sexual abuse cases.—

66 (2) In any criminal action in which the defendant is
67 charged with a crime against a victim under s. 787.06(3),
68 involving commercial sexual activity; s. 794.011; s. 794.05; s.
69 800.04; s. 826.04; s. 827.03, involving sexual abuse; s. 827.04,
70 involving sexual abuse; s. 827.071; or s. 847.0135(5), or any
71 other crime involving sexual abuse of another, or with any
72 attempt, solicitation, or conspiracy to commit any of these
73 crimes, the defendant's memorialized confession or admission is
74 admissible during trial without the state having to prove a
75 corpus delicti of the crime if the court finds in a hearing

76 | conducted outside the presence of the jury that the state is
 77 | unable to show the existence of each element of the crime, and
 78 | having so found, further finds that the defendant's confession
 79 | or admission is trustworthy. Factors which may be relevant in
 80 | determining whether the state is unable to show the existence of
 81 | each element of the crime include, but are not limited to, the
 82 | fact that, at the time the crime was committed, the victim was:

83 | (a) Physically helpless, involuntarily mentally
 84 | incapacitated, voluntarily mentally incapacitated, or mentally
 85 | defective, as those terms are defined in s. 794.011;

86 | Section 3. Paragraph (g) of subsection (3) of section
 87 | 787.06, Florida Statutes, is amended to read:

88 | 787.06 Human trafficking.—

89 | (3) Any person who knowingly, or in reckless disregard of
 90 | the facts, engages in human trafficking, or attempts to engage
 91 | in human trafficking, or benefits financially by receiving
 92 | anything of value from participation in a venture that has
 93 | subjected a person to human trafficking:

94 | (g) For commercial sexual activity in which any child
 95 | younger than 18 years of age or an adult believed by the person
 96 | to be a child younger than 18 years of age, or in which any
 97 | person who is mentally defective, involuntarily ~~or~~ mentally
 98 | incapacitated, or voluntarily mentally incapacitated, as those
 99 | terms are defined in s. 794.011(1), is involved commits a life
 100 | felony, punishable as provided in s. 775.082(3)(a)6., s.

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101 | 775.083, or s. 775.084.

102

103 | For each instance of human trafficking of any individual under
104 | this subsection, a separate crime is committed and a separate
105 | punishment is authorized.

106 | Section 4. This act shall take effect October 1, 2023.